

Daniel M. Cislo, No. 125378
dan@cislo.com

Peter S. Veregge, No. 155769
pveregge@cislo.com

CISLO & THOMAS LLP
1333 2nd Street Suite 500
Santa Monica, California 90401-4110
Telephone: (310) 451-0647
Telefax: (310) 394-4477

Attorneys for Plaintiff,
THE TIRE HANGER CORP.

David A. Caine (Bar. No. 218074)
dacaine@agilityiplaw.com

AGILITY IP LAW, LLP
149 Commonwealth Drive
Menlo Park, CA 94025
Phone: (650) 227-4800

Attorneys for Defendants,
MY CAR GUY CONCIERGE SERVICES, INC.
d/b/a/ HOIST HANGER & PACIFIC LIFT AND
EQUIPMENT COMPANY, INC.

Timothy D. Robinett, (Bar No. 166797)
trobinett@manningleaver.com
MANNING LEAVER BRUDER & BERBERICH
5750 Wilshire Boulevard, Suite 655
Los Angeles, California 90036-3637
Telephone: 323.937.4730
Facsimile: 323.937.6727

Attorneys for Defendant,
SONIC AUTOMOTIVE, INC.

[Attorneys Continued on Next Page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THE TIRE HANGER CORPORATION,)	CASE NO. 14-cv-00549-ODW (MANx)
a California corporation,)	
Plaintiff,)	[Hon. Margaret A. Nagle]
vs.)	
MY CAR GUY CONCIERGE)	PROPOSED ORDER ENTERING
SERVICES INC. dba HOIST)	STIPULATED PROTECTIVE
HANGER, a Canadian company, et al.,)	ORDER
Defendants.)	

PROPOSED ORDER ENTERING STIPULATED PROTECTIVE ORDER

WHEREAS, it may be necessary or desirable to take discovery of information which is believed to be confidential and proprietary by the holder thereof; and

WHEREAS, the parties hereto desire to obtain a protective order to prevent dissemination and unnecessary disclosure of such information on the public record;

IT IS HEREBY STIPULATED, and subject to the Court's approval, ORDERED, pursuant to Federal Rules of Civil Procedure, Rule 26(c), that the following provisions shall govern the handling of such confidential information and documents in these proceedings:

1. GOOD CAUSE STATEMENT

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

Plaintiff may contend resolution of liability issues and the associated damages analysis requires evidence of financial information, marketing and sales information, cost information, vendor information, and customer lists, at a minimum, to be disclosed, at minimum, to opposing counsel. Some of the financial information may be nonpublic. Defendant Sonic Automotive, Inc., alleged to be a potential infringer, is a public company, and release of nonpublic financial information would be very damaging to Sonic Automotive, Inc.'s business.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further

1 acknowledge, as set forth in Section 14.4, below, that this Order creates no
 2 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
 3 forth the procedures that must be followed when a party seeks permission from the
 4 court to file material under seal.

5 Based on the foregoing demonstration of good cause in support of this
 6 Protective Order, this Order should be granted by the Court to protect the parties'
 7 confidential business information.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the
 10 designation of information or items under this Order.

11 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
 12 how it is generated, stored or maintained) or tangible things that qualify for
 13 protection under Federal Rule of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House
 15 Counsel (as well as their support staff).

16 2.4 Designated House Counsel: House Counsel who seek access to
 17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this
 18 matter.

19 2.5 Designating Party: a Party or Non-Party that designates information or
 20 items that it produces in disclosures or in responses to discovery as
 21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 22 ONLY".

23 2.6 Disclosure or Discovery Material: all items or information, regardless
 24 of the medium or manner in which it is generated, stored, or maintained (including,
 25 among other things, testimony, transcripts, and tangible things), that are produced
 26 or generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
 28 pertinent to the litigation who (1) has been retained by a Party or its counsel to

1 serve as an expert witness or as a consultant in this action, (2) is not a past or
 2 current employee of a Party or of a Party's competitor, and (3) at the time of
 3 retention, is not anticipated to become an employee of a Party or of a Party's
 4 competitor.

5 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 6 Information or Items: extremely sensitive "Confidential Information or Items,"
 7 disclosure of which to another Party or Non-Party would create a substantial risk of
 8 serious harm that could not be avoided by less restrictive means.

9 2.9 House Counsel: attorneys who are employees of a party to this action.
 10 House Counsel does not include Outside Counsel of Record or any other outside
 11 counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or
 13 other legal entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a
 15 party to this action but are retained to represent or advise a party to this action and
 16 have appeared in this action on behalf of that party or are affiliated with a law firm
 17 which has appeared on behalf of that party.

18 2.12 Party: any party to this action, including all of its officers, directors,
 19 employees, consultants, retained experts, and Outside Counsel of Record (and their
 20 support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
 22 Discovery Material in this action.

23 2.14 Professional Vendors: persons or entities that provide litigation
 24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 26 and their employees and subcontractors.

1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Stipulation and Order do not cover the
13 following information: (a) any information that is in the public domain at the time
14 of disclosure to a Receiving Party or becomes part of the public domain after its
15 disclosure to a Receiving Party as a result of publication not involving a violation
16 of this Order, including becoming part of the public record through trial or
17 otherwise; and (b) any information known to the Receiving Party prior to the
18 disclosure or obtained by the Receiving Party after the disclosure from a source
19 who obtained the information lawfully and under no obligation of confidentiality to
20 the Designating Party. Any use of Protected Material at trial shall be governed by a
21 separate agreement or order.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
27 or without prejudice; and (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,

1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

5 Each Party or Non-Party that designates information or items for protection under
6 this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards. To the extent it is practical to do so, the
8 Designating Party must designate for protection only those parts of material,
9 documents, items, or oral or written communications that qualify – so that other
10 portions of the material, documents, items, or communications for which protection
11 is not warranted are not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber or retard the case development process or
15 to impose unnecessary expenses and burdens on other parties) expose the
16 Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection at all or do not qualify for the
19 level of protection initially asserted, that Designating Party must promptly notify all
20 other parties that it is withdrawing the mistaken designation.

21 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
22 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is

concluded) a right to have up to 21 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored

1 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 2 EYES ONLY”. If only a portion or portions of the information or item warrant
 3 protection, the Producing Party, to the extent practicable, shall identify the
 4 protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 6 failure to designate qualified information or items does not, standing alone, waive
 7 the Designating Party’s right to secure protection under this Order for such
 8 material. Upon timely correction of a designation, the Receiving Party must make
 9 reasonable efforts to assure that the material is treated in accordance with the
 10 provisions of this Order.

11 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 13 designation of confidentiality at any time. Unless a prompt challenge to a
 14 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
 15 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 16 delay of the litigation, a Party does not waive its right to challenge a confidentiality
 17 designation by electing not to mount a challenge promptly after the original
 18 designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 20 resolution process by providing written notice of each designation it is challenging
 21 and describing the basis for each challenge. To avoid ambiguity as to whether a
 22 challenge has been made, the written notice must recite that the challenge to
 23 confidentiality is being made in accordance with this specific paragraph of the
 24 Protective Order. The parties shall attempt to resolve each challenge in good faith
 25 and must begin the process by conferring directly (in voice to voice dialogue; other
 26 forms of communication are not sufficient) within 14 days of the date of service of
 27 notice. In conferring, the Challenging Party must explain the basis for its belief that
 28 the confidentiality designation was not proper and must give the Designating Party

1 an opportunity to review the designated material, to reconsider the circumstances,
 2 and, if no change in designation is offered, to explain the basis for the chosen
 3 designation. A Challenging Party may proceed to the next stage of the challenge
 4 process only if it has engaged in this meet and confer process first or establishes
 5 that the Designating Party is unwilling to participate in the meet and confer process
 6 in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
 8 court intervention, the Designating Party shall file and serve a motion to retain
 9 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
 10 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
 11 days of the parties agreeing that the meet and confer process will not resolve their
 12 dispute, whichever is earlier. Each such motion must be accompanied by a
 13 competent declaration affirming that the movant has complied with the meet and
 14 confer requirements imposed in the preceding paragraph. Failure by the
 15 Designating Party to make such a motion including the required declaration within
 16 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
 17 designation for each challenged designation. In addition, the Challenging Party
 18 may file a motion challenging a confidentiality designation at any time if there is
 19 good cause for doing so, including a challenge to the designation of a deposition
 20 transcript or any portions thereof. Any motion brought pursuant to this provision
 21 must be accompanied by a competent declaration affirming that the movant has
 22 complied with the meet and confer requirements imposed by the preceding
 23 paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the
 25 Designating Party. Frivolous challenges and those made for an improper purpose
 26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 27 expose the Challenging Party to sanctions. Unless the Designating Party has
 28 waived the confidentiality designation by failing to file a motion to retain

1 confidentiality as described above, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's
3 designation until the court rules on the challenge.

4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the litigation has been terminated, a
10 Receiving Party must comply with the provisions of section 15 below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
13 location and in a secure manner¹ that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
23 A;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this litigation
26

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
2 A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants,
8 and Professional Vendors to whom disclosure is reasonably necessary for this
9 litigation and who have signed the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure
12 is reasonably necessary and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
14 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
15 to depositions that reveal Protected Material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order.

18 (g) the author or recipient of a document containing the information or
19 a custodian or other person who otherwise possessed or knew the information.

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
22 in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
24 EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as
26 well as employees of said Outside Counsel of Record to whom it is reasonably
27 necessary to disclose the information for this litigation and who have signed the
28

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A;

3 (b) Designated House Counsel of the Receiving Party (1) who has no
4 involvement in competitive decision-making, (2) to whom disclosure is reasonably
5 necessary for this litigation, (3) who has signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth
7 in paragraph 7.4(a)(1), below, have been followed;

8 (c) Experts of the Receiving Party (1) to whom disclosure is
9 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set
11 forth in paragraph 7.4(a)(2), below, have been followed;

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 and Professional Vendors to whom disclosure is reasonably necessary for this
15 litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A); and

17 (f) the author or recipient of a document containing the information or
18 a custodian or other person who otherwise possessed or knew the information.

19 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
21 Designated House Counsel or Experts.

22 (a)(1) Unless otherwise ordered by the court or agreed to in writing by
23 the Designating Party, a Party that seeks to disclose to Designated House Counsel
24 any information or item that has been designated “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
26 written request to the Designating Party that (1) sets forth the full name of the
27 Designated House Counsel and the city and state of his or her residence and (2)
28 describes the Designated House Counsel’s current and reasonably foreseeable

CISLO & THOMAS LLP
Attorneys at Law
 1333 2ND STREET
 SUITE 500
 SANTA MONICA, CALIFORNIA 90401-4110
 TELEPHONE: (310) 451-0647 FACSIMILE: (310) 394-4477

1 future primary job duties and responsibilities in sufficient detail to determine if
 2 House Counsel is involved, or may become involved, in any competitive decision-
 3 making.

4 (a)(2) Unless otherwise ordered by the court or agreed to in writing by
 5 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 6 Order) any information or item that has been designated “HIGHLY
 7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
 8 first must make a written request to the Designating Party that (1) identifies the
 9 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 10 ONLY” information that the Receiving Party seeks permission to disclose to the
 11 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
 12 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies
 13 the Expert’s current employer(s), (5) identifies each person or entity from whom the
 14 Expert has received compensation or funding for work in his or her areas of
 15 expertise or to whom the expert has provided professional services, including in
 16 connection with a litigation, at any time during the preceding five years,² and (6)
 17 identifies (by name and number of the case, filing date, and location of court) any
 18 litigation in connection with which the Expert has offered expert testimony,
 19 including through a declaration, report, or testimony at a deposition or trial, during
 20 the preceding five years.

21 (b) A Party that makes a request and provides the information
 22 specified in the preceding respective paragraphs may disclose the subject Protected
 23 Material to the identified Designated House Counsel or Expert unless, within 14
 24

25
 26 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 27 party, then the Expert should provide whatever information the Expert believes can be disclosed
 28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 days of delivering the request, the Party receives a written objection from the
2 Designating Party. Any such objection must set forth in detail the grounds on
3 which it is based.

4 (c) A Party that receives a timely written objection must meet and
5 confer with the Designating Party (through direct voice to voice dialogue) to try to
6 resolve the matter by agreement within seven days of the written objection. If no
7 agreement is reached, the Party seeking to make the disclosure to Designated House
8 Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in
9 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
10 court to do so. Any such motion must describe the circumstances with specificity,
11 set forth in detail the reasons why the disclosure to Designated House Counsel or
12 the Expert is reasonably necessary, assess the risk of harm that the disclosure would
13 entail, and suggest any additional means that could be used to reduce that risk. In
14 addition, any such motion must be accompanied by a competent declaration
15 describing the parties' efforts to resolve the matter by agreement (i.e., the extent
16 and the content of the meet and confer discussions) and setting forth the reasons
17 advanced by the Designating Party for its refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to Designated House
19 Counsel or the Expert shall bear the burden of proving that the risk of harm that the
20 disclosure would entail (under the safeguards proposed) outweighs the Receiving
21 Party's need to disclose the Protected Material to its Designated House Counsel or
22 Expert.

23 **8. PROSECUTION BAR**

24 Absent written consent from the Producing Party, any individual who
25 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 information shall not be involved in the prosecution of patents or patent
27 applications relating to methods and apparatus for supporting vehicle wheels that
28 have been temporarily removed from a vehicle disposed on a lift or hoist, *i.e.* a tire

hanger, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope of patent claims.³ To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination), or filing a petition to revive, or for maintenance of, existing patents. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. **[THIS SECTION INTENTIONALLY OMITTED]**

10. **PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena, valid discovery request, or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the

³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 subpoena or order is subject to this Protective Order. Such notification shall
2 include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.⁴

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” before a determination by the court from which the subpoena or
9 order issued, unless the Party has obtained the Designating Party’s permission. The
10 Designating Party shall bear the burden and expense of seeking protection in that
11 court of its confidential material – and nothing in these provisions should be
12 construed as authorizing or encouraging a Receiving Party in this action to disobey
13 a lawful directive from another court.

14 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced
17 by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced
19 by Non-Parties in connection with this litigation is protected by the remedies and
20 relief provided by this Order. Nothing in these provisions should be construed as
21 prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery
23 request, to produce a Non-Party’s confidential information in its possession, and the
24 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:
26

27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of

⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 this Order, and (d) request such person or persons to execute the “Acknowledgment
2 and Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the Receiving Parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order that provides for
10 production without prior privilege review. Pursuant to Federal Rule of Evidence
11 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
12 of a communication or information covered by the attorney-client privilege or work
13 product protection, the parties may incorporate their agreement in the stipulated
14 protective order submitted to the court.

15 **14. MISCELLANEOUS**

16 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the court in the future.

18 14.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on
22 any ground to use in evidence of any of the material covered by this Protective
23 Order.

24 14.3 Export Control. Disclosure of Protected Material shall be subject to all
25 applicable laws and regulations relating to the export of technical data contained in
26 such Protected Material, including the release of such technical data to foreign
27 persons or nationals in the United States or elsewhere. The Producing Party shall
28

1 be responsible for identifying any such controlled technical data, and the Receiving
2 Party shall take measures necessary to ensure compliance.

3 14.4 Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this action any Protected
6 Material. A Party that seeks to file under seal any Protected Material must comply
7 with Civil Local Rule 79-5. Protected Material may only be filed under seal
8 pursuant to a court order authorizing the sealing of the specific Protected Material
9 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
10 request establishing that the Protected Material at issue is privileged, protectable as
11 a trade secret, or otherwise entitled to protection under the law. If a Receiving
12 Party's request to file Protected Material under seal is denied by the court, then the
13 Receiving Party may file the Protected Material in the public record unless
14 otherwise instructed by the court.

15. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in
17 paragraph 4, each Receiving Party must return all Protected Material to the
18 Producing Party or destroy such material. As used in this subdivision, "all
19 Protected Material" includes all copies, abstracts, compilations, summaries, and any
20 other format reproducing or capturing any of the Protected Material. Whether the
21 Protected Material is returned or destroyed, the Receiving Party must submit a
22 written certification to the Producing Party (and, if not the same person or entity, to
23 the Designating Party) by the 60-day deadline that (1) identifies (by category,
24 where appropriate) all the Protected Material that was returned or destroyed and (2)
25 affirms that the Receiving Party has not retained any copies, abstracts,
26 compilations, summaries or any other format reproducing or capturing any of the
27 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
28

an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

**PURSUANT TO THE STIPULATION OF THE PARTIES THROUGH
THEIR COUNSEL OF RECORD, IT IS SO ORDERED.**

Date: September 25, 2014



Hon. ~~Margaret A. Nagle~~ Otis D. Wright
United States Magistrate Judge

CISLO & THOMAS LLP
Attorneys at Law
1333 2ND STREET
SUITE 500
SANTA MONICA, CALIFORNIA 90401-4110
TELEPHONE: (310) 451-0647
FACSIMILE: (310) 394-4477

CISLO & THOMAS LLP
Attorneys at Law
 SUITE 500
 1333 2ND STREET
 SANTA MONICA, CALIFORNIA 90401-4110
 TELEPHONE: (310) 451-0647 FACSIMILE: (310) 394-4477

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
 that was issued by the United States District Court for the Central District of California in the
 case of The Tire Hanger Corporation v. My Car Guy Concierge Services, Inc. et al., Case No. 14-
 cv-00549 ODW (MANx).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
 and I understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
telephone number] as my California agent for service of process in connection with this action
 or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

I am over the age of eighteen (18) years, employed in the County of Los Angeles, and not a party to the above-entitled action. My business address is 1333 2nd Street, Suite 500, Santa Monica, California 90401-4110.

On September 22, 2014, I served:

STIPULATED PROTECTIVE ORDER

to be sent by ECF electronic mail to the following:

David A. Caine, Esq.
Agility IP Law
149 Commonwealth Drive, Suite 1033
Menlo Park, CA 94025
dacaine@agilityiplaw.com

Timothy D. Robinett, Esq.
Manning Leaver Bruder & Berlich
5750 Wilshire Boulevard, Suite 655
Los Angeles, CA 90036
trobinett@manningleaver.com

Michael G. Adams, Esq.
Jami J. Farris, Esq.
Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center, Suite 3000
401 South Tryon Street
Charlotte, NC 28202
mikeadams@parkerpoe.com
jamifarris@parkerpoe.com

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 22, 2014, at Westlake Village, California.

/s/ Laura Banuelos
Laura Banuelos

CISLO & THOMAS LLP
Attorneys at Law
SUITE 500
1333 2ND STREET
SANTA MONICA, CALIFORNIA 90401-4110
TELEPHONE: (310) 451-0647 FACSIMILE: (310) 394-4477